

ASSEMBLY BILL

No. 2850

Introduced by Assembly Member Spitzer

February 24, 2006

An act to amend Sections 296, 297, and 298.1 of the Penal Code, and to amend Section 76104.6 of the Government Code, relating to DNA testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2850, as introduced, Spitzer. DNA testing.

(1) Existing law requires persons who are arrested for, charged with, or convicted of specified crimes to provide biological samples for law enforcement identification, as specified, regardless of the sentence imposed, including any disposition rendered or whether the person is diverted, fined, or referred for evaluation.

This bill would remove the reference to diversion from these provisions.

(2) Existing law provides that specified accredited laboratories are authorized to analyze crime scene samples and perform anonymous analysis of specimens and samples for forensic identification, as specified.

This bill would change the accreditation required of these laboratories, as specified.

(3) Existing law provides that authorized law enforcement, custodial, or corrections personal, including peace officers, may employ reasonable force to collect biological samples from individuals who refuse to provide those samples, as required by law.

This bill would include the officers of a state mental hospital among those peace officers who may collect those samples as described above.

(4) Existing law provides that for the purposes of implementing the DNA Fingerprint Unsolved Crime and Innocence Protection Act, an additional penalty shall be levied upon every fine, penalty, or forfeiture composed and collected for criminal offenses.

This bill would clarify that this penalty shall be levied in the case of both adult and juvenile criminal offenses.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 296 of the Penal Code is amended to
2 read:

3 296. (a) The following persons shall provide buccal swab
4 samples, right thumbprints, and a full palm print impression of
5 each hand, and any blood specimens or other biological samples
6 required pursuant to this chapter for law enforcement
7 identification analysis:

8 (1) Any person, including any juvenile, who is convicted of or
9 pleads guilty or no contest to any felony offense, or is found not
10 guilty by reason of insanity of any felony offense, or any juvenile
11 who is adjudicated under Section 602 of the Welfare and
12 Institutions Code for committing any felony offense.

13 (2) Any adult person who is arrested for or charged with any
14 of the following felony offenses:

15 (A) Any felony offense specified in Section 290 or attempt to
16 commit any felony offense described in Section 290, or any
17 felony offense that imposes upon a person the duty to register in
18 California as a sex offender under Section 290.

19 (B) Murder or voluntary manslaughter or any attempt to
20 commit murder or voluntary manslaughter.

21 (C) Commencing on January 1 of the fifth year following
22 enactment of the act that added this subparagraph, as amended,
23 any adult person arrested or charged with any felony offense.

24 (3) Any person, including any juvenile, who is required to
25 register under Section 290 or 457.1 because of the commission
26 of, or the attempt to commit, a felony or misdemeanor offense, or
27 any person, including any juvenile, who is housed in a mental
28 health facility or sex offender treatment program after referral to

1 such facility or program by a court after being charged with any
2 felony offense.

3 (4) The term “felony” as used in this subdivision includes an
4 attempt to commit the offense.

5 (5) Nothing in this chapter shall be construed as prohibiting
6 collection and analysis of specimens, samples, or print
7 impressions as a condition of a plea for a non-qualifying offense.

8 (b) The provisions of this chapter and its requirements for
9 submission of specimens, samples and print impressions as soon
10 as administratively practicable shall apply to all qualifying
11 persons regardless of sentence imposed, including any sentence
12 of death, life without the possibility of parole, or any life or
13 indeterminate term, or any other disposition rendered in the case
14 of an adult or juvenile tried as an adult, or whether the person is
15 ~~diverted~~, fined, or referred for evaluation, and regardless of
16 disposition rendered or placement made in the case of juvenile
17 who is found to have committed any felony offense or is
18 adjudicated under Section 602 of the Welfare and Institutions
19 Code.

20 (c) The provisions of this chapter and its requirements for
21 submission of specimens, samples, and print impressions as soon
22 as administratively practicable by qualified persons as described
23 in subdivision (a) shall apply regardless of placement or
24 confinement in any mental hospital or other public or private
25 treatment facility, and shall include, but not be limited to, the
26 following persons, including juveniles:

27 (1) Any person committed to a state hospital or other treatment
28 facility as a mentally disordered sex offender under Article 1
29 (commencing with Section 6300) of Chapter 2 of Part 2 of
30 Division 6 of the Welfare and Institutions Code.

31 (2) Any person who has a severe mental disorder as set forth
32 within the provisions of Article 4 (commencing with Section
33 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

34 (3) Any person found to be a sexually violent predator
35 pursuant to Article 4 (commencing with Section 6600) of
36 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
37 Code.

38 (d) The provisions of this chapter are mandatory and apply
39 whether or not the court advises a person, including any juvenile,
40 that he or she must provide the data bank and database

specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 2. Section 297 of the Penal Code is amended to read:

297. (a) (1) The laboratories of the Department of Justice that are accredited by ~~the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) or any certifying body approved by the ASCLD/LAB, and any law enforcement crime laboratory designated by the Department of Justice that is accredited by the ASCLD/LAB or any certifying body approved by the ASCLD/LAB~~ *an accrediting organization identified by the Director of the Federal Bureau of Investigations, or his or her designee, in accordance with federal statutes, and any law enforcement crime laboratory designated*

1 by the Department of Justice that is accredited by an
2 organization identified by the director of the Federal Bureau of
3 Investigations, or his or her designee in accordance with federal
4 statutes, are authorized to analyze crime scene samples and other
5 samples of known and unknown origin and to compare and check
6 the forensic identification profiles, including DNA profiles, of
7 these samples upload the results of those analysis for comparison
8 against available DNA and forensic identification data banks and
9 databases in order to establish identity and origin of samples for
10 identification purposes.

11 (2) Laboratories, including law enforcement laboratories, that
12 are accredited by ASCLD/LAB or any certifying body approved
13 by the ASCLD/LAB by an accrediting organization as specified
14 in paragraph (1) that contract with the Department of Justice
15 pursuant to Section 298.3 are authorized to perform anonymous
16 analysis of specimens and samples for forensic identification as
17 provided in this chapter.

18 (b) (1) A biological sample obtained from a suspect in a
19 criminal investigation for the commission of any crime may be
20 analyzed for forensic identification profiles, including DNA
21 profiles, by the DNA Laboratory of the Department of Justice or
22 any law enforcement crime laboratory accredited by the
23 ASCLD/LAB or any certifying body approved by the
24 ASCLD/LAB and then compared by the Department of Justice in
25 and between as many cases and investigations as necessary, and
26 searched against the forensic identification profiles, including
27 DNA profiles, stored in the files of the Department of Justice
28 DNA data bank or database or any available data banks or
29 databases as part of the Department of Justice DNA Database
30 and Data Bank Program.

31 (2) The law enforcement investigating agency submitting a
32 specimen, sample, or print impression to the DNA Laboratory of
33 the Department of Justice or law enforcement crime laboratory
34 pursuant to this section shall inform the Department of Justice
35 DNA Laboratory within two years whether the person remains a
36 suspect in a criminal investigation. Upon written notification
37 from a law enforcement agency that a person is no longer a
38 suspect in a criminal investigation, the Department of Justice
39 DNA Laboratory shall remove the suspect sample from its data
40 bank files. However, any identification, warrant, arrest, or

1 prosecution based upon a data bank or database match shall not
2 be invalidated or dismissed due to a failure to purge or delay in
3 purging records.

4 (c) All laboratories, including the Department of Justice DNA
5 laboratories, contributing DNA profiles for inclusion in
6 California's DNA Data Bank shall be accredited by the
7 ASCLD/LAB or any certifying body approved by the
8 ASCLD/LAB. Additionally, each laboratory shall submit to the
9 Department of Justice for review the annual report required by
10 the ASCLD/LAB or any certifying body approved by the
11 ASCLD/LAB which documents the laboratory's adherence to
12 ASCLD/LAB standards or the standards of any certifying body
13 approved by the ASCLD/LAB. The requirements of this
14 subdivision do not preclude DNA profiles developed in
15 California from being searched in the National DNA Database or
16 Data Bank (CODIS).

17 (d) Nothing in this section precludes local law enforcement
18 DNA laboratories from maintaining local forensic databases and
19 data banks or performing forensic identification analyses,
20 including DNA profiling, independently from the Department of
21 Justice DNA and Forensic Identification Data Base and Data
22 Bank Program.

23 (e) The limitation on the types of offenses set forth in
24 subdivision (a) of Section 296 as subject to the collection and
25 testing procedures of this chapter is for the purpose of facilitating
26 the administration of this chapter by the Department of Justice,
27 and shall not be considered cause for dismissing an investigation
28 or prosecution or reversing a verdict or disposition.

29 (f) The detention, arrest, wardship, adjudication, or conviction
30 of a person based upon a data bank match or database
31 information is not invalidated if it is determined that the
32 specimens, samples, or print impressions were obtained or placed
33 or retained in a data bank or database by mistake.

34 SEC. 3. Section 298.1 of the Penal Code is amended to read:

35 298.1. (a) As of the effective date of this chapter, any person
36 who refuses to give any or all of the following, blood specimens,
37 saliva samples, or thumb or palm print impressions as required
38 by this chapter, once he or she has received written notice from
39 the Department of Justice, the Department of Corrections, any
40 law enforcement personnel, or officer of the court that he or she

1 is required to provide specimens, samples, and print impressions
2 pursuant to this chapter is guilty of a misdemeanor. The refusal
3 or failure to give any or all of the following, a blood specimen,
4 saliva sample, or thumb or palm print impression is punishable as
5 a separate offense by both a fine of five hundred dollars (\$500)
6 and imprisonment of up to one year in a county jail, or if the
7 person is already imprisoned in the state prison, by sanctions for
8 misdemeanors according to a schedule determined by the
9 Department of Corrections.

10 (b) (1) Notwithstanding subdivision (a), authorized law
11 enforcement, custodial, or corrections personnel, including peace
12 officers as defined in Sections 830, 830.1, *subdivision (d) of*
13 *Section 830.2, Sections 830.5, and— 830.38, or 830.55,—or*
14 ~~subdivision (d) of Section 830.2,~~ may employ reasonable force to
15 collect blood specimens, saliva samples, or thumb or palm print
16 impressions pursuant to this chapter from individuals who, after
17 written or oral request, refuse to provide those specimens,
18 samples, or thumb or palm print impressions.

19 (2) The withdrawal of blood shall be performed in a medically
20 approved manner in accordance with the requirements of
21 paragraph (2) of subdivision (b) of Section 298.

22 (3) The use of reasonable force as provided in this subdivision
23 shall be carried out in a manner consistent with regulations and
24 guidelines adopted pursuant to subdivision (c).

25 (c) (1) The Department of Corrections and the Department of
26 the Youth Authority shall adopt regulations governing the use of
27 reasonable force as provided in subdivision (b), which shall
28 include the following:

29 (A) The term “use of reasonable force” shall be defined as the
30 force that an objective, trained and competent correctional
31 employee, faced with similar facts and circumstances, would
32 consider necessary and reasonable to gain compliance with this
33 chapter.

34 (B) The use of reasonable force shall not be authorized
35 without the prior written authorization of the supervising officer
36 on duty. The authorization shall include information that reflects
37 the fact that the offender was asked to provide the requisite
38 specimen, sample, or impression and refused.

39 (C) The use of reasonable force shall be preceded by efforts to
40 secure voluntary compliance with this section.

1 (D) If the use of reasonable force includes a cell extraction, the
2 regulations shall provide that the extraction be videotaped.

3 (2) The Board of Corrections shall adopt guidelines governing
4 the use of reasonable force as provided in subdivision (b) for
5 local detention facilities, which shall include the following:

6 (A) The term “use of reasonable force” shall be defined as the
7 force that an objective, trained and competent correctional
8 employee, faced with similar facts and circumstances, would
9 consider necessary and reasonable to gain compliance with this
10 chapter.

11 (B) The use of reasonable force shall not be authorized
12 without the prior written authorization of the supervising officer
13 on duty. The authorization shall include information that reflects
14 the fact that the offender was asked to provide the requisite
15 specimen, sample, or impression and refused.

16 (C) The use of reasonable force shall be preceded by efforts to
17 secure voluntary compliance with this section.

18 (D) If the use of reasonable force includes a cell extraction, the
19 extraction shall be videotaped.

20 (3) The Department of Corrections, the Department of the
21 Youth Authority, and the Board of Corrections shall report to the
22 Legislature not later than January 1, 2005, on the use of
23 reasonable force pursuant to this section. The report shall
24 include, but is not limited to, the number of refusals, the number
25 of incidents of the use of reasonable force under this section, the
26 type of force used, the efforts undertaken to obtain voluntary
27 compliance, if any, and whether any medical attention was
28 needed by the prisoner or personnel as a result of force being
29 used.

30 SEC. 4. Section 76104.6 of the Government Code is amended
31 to read:

32 76104.6. (a) For the purpose of implementing the DNA
33 Fingerprint, Unsolved Crime and Innocence Protection Act, there
34 shall be levied an additional penalty of one dollar for every ten
35 dollars (\$10) or fraction thereof in each county which shall be
36 collected together with and in the same manner as the amounts
37 established by Section 1464 of the Penal Code, upon every fine,
38 penalty, or forfeiture imposed and collected by the courts for
39 *adult and juvenile* criminal offenses, including all offenses
40 involving a violation of the Vehicle Code or any local ordinance

1 adopted pursuant to the Vehicle Code, except parking offenses
2 subject to Article 3 (commencing with Section 40200) of Chapter
3 1 of Division 17 of the Vehicle Code. These moneys shall be
4 taken from fines and forfeitures deposited with the county
5 treasurer prior to any division pursuant to Section 1463 of the
6 Penal Code. The board of supervisors shall establish in the
7 county treasury a DNA Identification Fund into which shall be
8 deposited the collected moneys pursuant to this section. The
9 moneys of the fund shall be allocated pursuant to subdivision (b).

10 (b) (1) The fund moneys described in subdivision (a), together
11 with any interest earned thereon, shall be held by the county
12 treasurer separate from any funds subject to transfer or division
13 pursuant to Section 1463 of the Penal Code. Deposits to the fund
14 may continue through and including the 20th year after the initial
15 calendar year in which the surcharge is collected, or longer if and
16 as necessary to make payments upon any lease or leaseback
17 arrangement utilized to finance any of the projects specified
18 herein.

19 (2) On the last day of each calendar quarter of the year
20 specified in this subdivision, the county treasurer shall transfer
21 fund moneys in the county's DNA Identification Fund to the
22 state Controller for credit to the state's DNA Identification Fund,
23 which is hereby established in the State Treasury, as follows:

24 (A) in the first two calendar years following the effective date
25 of this section, 70 percent of the amounts collected, including
26 interest earned thereon;

27 (B) in the third calendar year following the effective date of
28 this section, 50 percent of the amounts collected, including
29 interest earned thereon;

30 (C) in the fourth calendar year following the effective date of
31 this section and in each calendar year thereafter, 25 percent of the
32 amounts collected, including interest earned thereon.

33 (3) Funds remaining in the county's DNA Identification Fund
34 shall be used only to reimburse local sheriff or other law
35 enforcement agencies to collect DNA specimens, samples, and
36 print impressions pursuant to this chapter; for expenditures and
37 administrative costs made or incurred to comply with the
38 requirements of paragraph (5) of subdivision (b) of Section 298
39 including the procurement of equipment and software integral to
40 confirming that a person qualifies for entry into the Department

1 of Justice DNA Database and Data Bank Program; and to local
2 sheriff, police, district attorney, and regional state crime
3 laboratories for expenditures and administrative costs made or
4 incurred in connection with the processing, analysis, tracking,
5 and storage of DNA crime scene samples from cases in which
6 DNA evidence would be useful in identifying or prosecuting
7 suspects, including the procurement of equipment and software
8 for the processing, analysis, tracking, and storage of DNA crime
9 scene samples from unsolved cases.

10 (4) The state's DNA Identification Fund shall be administered
11 by the Department of Justice. Funds in the state's DNA
12 Identification Fund, upon appropriation by the Legislature, shall
13 be used by the Attorney General only to support DNA testing in
14 the state and to offset the impacts of increased testing and shall
15 be allocated as follows:

16 (A) Of the amount transferred pursuant to subparagraph (A) of
17 paragraph (2) of subdivision (b), 90 percent to the Department of
18 Justice DNA Laboratory, first, to comply with the requirements
19 of Section 298.3 of the Penal Code and, second, for expenditures
20 and administrative costs made or incurred in connection with the
21 processing, analysis, tracking, and storage of DNA specimens
22 and samples including the procurement of equipment and
23 software for the processing, analysis, tracking, and storage of
24 DNA samples and specimens obtained pursuant to the DNA and
25 Forensic Identification Database and Databank Act, as amended,
26 and 10 percent to the Department of Justice Information Bureau
27 Criminal History Unit for expenditures and administrative costs
28 that have been approved by the Chief of the Department of
29 Justice Bureau of Forensic Services made or incurred to update
30 equipment and software to facilitate compliance with the
31 requirements of subdivision (e) of Section 299.5 of the Penal
32 Code.

33 (B) Of the amount transferred pursuant to subparagraph (B) of
34 paragraph (2) of subdivision (b), funds shall be allocated by the
35 Department of Justice DNA Laboratory, first, to comply with the
36 requirements of Section 298.3 of the Penal Code and, second, for
37 expenditures and administrative costs made or incurred in
38 connection with the processing, analysis, tracking, and storage of
39 DNA specimens and samples including the procurement of
40 equipment and software for the processing, analysis, tracking,

1 and storage of DNA samples and specimens obtained pursuant to
2 the DNA and Forensic Identification Database and Databank Act,
3 as amended.

4 (C) Of the amount transferred pursuant to subparagraph (C) of
5 paragraph (2) of subdivision (b), funds shall be allocated by the
6 Department of Justice to the DNA Laboratory to comply with the
7 requirements of Section 298.3 of the Penal Code and for
8 expenditures and administrative costs made or incurred in
9 connection with the processing, analysis, tracking, and storage of
10 DNA specimens and samples including the procurement of
11 equipment and software for the processing, analysis, tracking,
12 and storage of DNA samples and specimens obtained pursuant to
13 the DNA and Forensic Identification Database and Databank Act,
14 as amended.

15 (c) On or before April 1 in the year following adoption of this
16 section, and annually thereafter, the board of supervisors of each
17 county shall submit a report to the Legislature and the
18 Department of Justice. The report shall include the total amount
19 of fines collected and allocated pursuant to this section, and the
20 amounts expended by the county for each program authorized
21 pursuant to paragraph (3) of subdivision (b) of this section. The
22 Department of Justice shall make the reports publicly available
23 on the department's Web site.

24 (d) All requirements imposed on the Department of Justice
25 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence
26 Protection Act are contingent upon the availability of funding
27 and are limited by revenue, on a fiscal year basis, received by the
28 Department of Justice pursuant to this section and any additional
29 appropriation approved by the Legislature for purposes related to
30 implementing this measure.

31 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
32 and Innocence Protection Act, the Legislature shall loan the
33 Department of Justice General Fund in the amount of \$7,000,000
34 for purposes of implementing that act. This loan shall be repaid
35 with interest calculated at the rate earned by the Pooled Money
36 Investment Account at the time the loan is made. Principal and
37 interest on the loan shall be repaid in full no later than four years

- 1 from the date the loan was made and shall be repaid from
- 2 revenue generated pursuant to this section.

O